

DRAFT Briefing for March 2, 2017 Meeting with Mayor of Spokane

Background on Washington's Water Quality Standards for Human Health

- In 1992, EPA promulgated the National Toxics Rule (NTR), establishing chemical-specific numeric criteria for 14 states and territories, including Washington.
- The federal human health criteria (HHC) in the NTR remained applicable to Washington's waters until 2016.
- Over several years, EPA worked with Ecology to update the WA water quality standards (WQS) based on a more realistic estimate of the amount of fish Washingtonians eat (and thus the amount of pollutants they are exposed to.)
- However, Ecology missed several commitments to adopt protective HHC. Consequently, EPA proposed revised criteria for Washington on September 14, 2015.
- On March 1, 2016, Puget Soundkeeper Alliance and other parties asked a court to order EPA to finalize its proposed rule within 30 days.
- On August 1, 2016, Washington submitted to EPA for review revised HHC for certain pollutants. This was based on new data and information, and also included revised implementation tools.
- On August 3, 2016, the court ruled that EPA had until November 15, 2016 to act on Washington's submittal and/or finalize a federal rule.
- EPA reviewed Washington's submittal to determine whether the criteria were protective of Washington's applicable designated uses and were based on sound scientific rationale EPA's rule differed from the state's rule primarily due to use of bioaccumulation factors (BAFs) and relative source contribution (RSC) values of less than 1.
- EPA approved 45 of Washington's criteria where they were as stringent as or more stringent than scientifically defensible criteria that the EPA determined would be protective of Washington's designated uses. EPA disapproved 143 of Washington's criteria that were not sufficiently protective of the applicable designated uses.
- EPA also approved Ecology's revisions to its variance and compliance schedule provisions, providing the state and affected industries/municipalities flexibility and time to implement the new standards while making reasonable progress in improving water quality.
- In accordance with the court order, EPA concurrently issued a final federal rule that revised 144 additional HHC applicable to Washington on November 15, 2016.
- The combination of EPA's final rule and action on the state's rule ensures that the criteria are set at levels protective of Washington fish consumers.
- EPA's final rule took effect on December 28, 2016.
- There is no current litigation on EPA's federal rule for HHC in Washington. However, there is related litigation regarding EPA's decision to not update the state's criteria for arsenic, thallium, and dioxin in a complaint filed by NWEA on February 21, 2017.
- Also on February 21, 2017, EPA was informed that several industry groups (including Association of Washington Businesses, Northwest Pulp & Paper Association, and American Forest & Paper Association) filed a petition requesting EPA reconsider its action on the state rule and repeal or withdraw the federal rule.

Washington's Human Health Criteria for PCBs

- The PCB water quality criteria are based primarily on the highly bioaccumulative nature of PCBs (PCB accumulate in fish tissue to much higher concentrations than found in the surrounding water), the fish consumption rate, the cancer potency factor of certain PCB mixtures that have been studied, and the selected cancer risk level.
- Washington calculated its PCB criteria using a different cancer risk level than the one in one million (10^{-6}) risk level used for all other HHC in Washington. Ecology did not provide adequate justification for doing so, including how the alternative cancer risk level is protective of applicable tribal reserved rights in Washington.
- EPA disapproved Washington's PCB criteria of 170 pg/L, which was the same value under the NTR. EPA promulgated revised criteria for Washington of 7 pg/L (picograms/Liter) using a fish consumption rate of 175 g/day and a 10^{-6} cancer risk level.
- For comparison the Spokane Tribe PCB criteria are 1.3 pg/L, Oregon's PCB criteria are 6.4 pg/L, and the national EPA national recommendations for PCB criteria are 64 pg/L.
- EPA acknowledges that practical difficulties exist in implementing the PCB criteria given its widespread distribution in the environment at low levels.
- EPA's regulations offer a range of flexibilities to help manage these circumstances (such as variances, compliance schedules, and implementation of pollutant minimization plans to help identify PCB sources). Furthermore, the same practical difficulties exist with Washington's previously applicable criteria from the NTR.
- The Economic Analysis for the federal rule identified minimal costs associated with implementing the new PCB criteria due to method detection limits.
- The economic analysis for WA's HHC did not account for monitoring costs directly. However, the analysis did account for one-time administrative costs for TMDL development.
- Since the required analytical detection limit under the existing test method (Method 608) for wastewater monitoring (approximately 65,000 pg/L) is above the PCB criteria that EPA promulgated for Washington, PCBs are not commonly detected in effluent from Washington dischargers. However, there are more sensitive test methods that states and tribes may elect to use.

Spokane PCB Litigation – Total Maximum Daily Load (TMDL) and NPDES Permitting

- Since 1996, the Spokane River and adjacent water bodies have been listed as impaired for PCBs.
- Ecology began but did not complete a TMDL for PCBs.
- Work to reduce PCBs has been ongoing with dischargers and other stakeholders in the watershed; this work resulted in the creation of the Spokane River Task Force.
- In 2012, Sierra Club and Center for Environmental Law and Policy alleged that Ecology's failure to finalize PCB TMDL constituted its intent never to complete a TMDL and thus triggered a non-discretionary duty for EPA to do one. Spokane Tribe joined the Plaintiffs.
- On March 16, 2015, the U.S. District Court for the Western District of Washington ordered EPA to file a schedule for completion of the Task Force work and a definite endpoint by which time Ecology will pursue and finalize a TMDL.
- On July 14, 2015, EPA submitted a "Plan for Addressing PCBs in the Spokane River" to the Court. It included a schedule for the work of the Task Force and Ecology, including the

issuance of NPDES permits by Ecology, and other measurable milestones. The “Plan” established December 15, 2028 as the date to achieve water quality standards for PCBs. If not achieved, a TMDL would be required.

- The “Plan” was supported by Ecology and the Task Force recently reached its first milestone: Development of a plan by December 31, 2016 to bring the Spokane River into compliance with applicable water quality standards for PCBs by December 15, 2028.
- When EPA’s final rule took effect on December 28, 2016, the applicable WQS for PCBs was revised from 170 ppq to 7 ppq.
- On January 26, 2017, the Court granted a stay and ordered the parties to provide a status report every 120 days.
- Ecology’s NPDES permits are on hold. Ecology is evaluating the current situation and options for moving forward with the permits.

Spokane River Regional Toxics Task Force: PCB Concerns

- In December 2016, EPA received a letter from the Spokane River Regional Task Force (Task Force) requesting a meeting to discuss TSCA allowances for PCBs and the revised WQS. Their concern is that, because TSCA allows use of PCBs at levels billions of times higher than the PCB water quality standard and the burden on the community to meet the PCB standard is too great.
- We are currently working to schedule that meeting – which will include the Task Force, EPA R10, and our national Water and Toxics offices, targeting late March.
- In addition, the EPA continues to offer technical support to Ecology as they implement their Clean Water Act programs, including use of the newly applicable implementation tools that the EPA approved in November 2016.
- EPA also continues to be engaged with Ecology and others in the Spokane area, including regularly participating in the (Task Force) meetings. EPA water quality standards staff attended the Task Force’s January meeting to discuss EPA’s November 2016 actions and, specifically, the newly applicable PCB criteria. EPA supports and commends the Task Force’s collaborative efforts to develop a comprehensive plan to address PCB contamination in the Spokane River area. EPA intends to remain involved in the Task Force meetings.